A

SITA RAMAN RAMASAMY

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABDUL MALIK ISHAK JCA
WAN ADNAN MUHAMAD JCA
[CRIMINAL APPEAL NO: N-05-60-2006]

C

19 JUNE 2009

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Appeal against conviction and death sentence - Whether trial judge erred in holding that charge against accused proved beyond reasonable doubt*

D

The accused was convicted and sentenced to death under s. 302 of the Penal Code ('PC') for the murder of one Ramesh Kumar ('the victim'). He now appealed against his conviction and death sentence.

E

Held (dismissing the appeal)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) The victim's death was proved and the cause of death was stab wounds on the neck. In view of the dangerous weapon used, and the injuries sustained by the victim at the time and place of incident, there was ample evidence to infer an intention to cause bodily injury to the victim. There was also overwhelming evidence pointing to the fact that it was the accused that caused the victim's death. In addition, the presence of the accused at the scene of crime and identification was also established by evidence. (paras 17, 19, 20 & 21)

F

G

(2) There was no error on the part of the trial judge in holding that there was a *prima facie* case for the accused to answer under s. 302 PC. The trial judge carefully considered and weighed the defence case and was right in deciding that the prosecution proved the charge against the accused beyond reasonable doubt and that the accused failed to cast any reasonable doubt in the prosecution case. (paras 23 & 26)

H

I

Bahasa Malaysia *Translation Of Headnotes*

Tertuduh telah disabit dan dijatuhkan hukuman mati di bawah s. 302 Kanun Keseksaan bagi pembunuhan seorang lelaki bernama Ramesh Kumar ('mangsa'). Tertuduh kini merayu terhadap sabitan dan hukuman mati yang dikenakan terhadapnya.

Diputuskan (menolak rayuan)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Kematian mangsa telah dibuktikan dan sebab kematiannya ialah kecederaan kerana tikaman dilehernya. Memandangkan senjata berbahaya yang digunakan dan kecederaan yang dialami mangsa pada masa dan tempat kejadian, terdapat banyak keterangan untuk membuat kesimpulan bahawa adanya niat untuk menyebabkan kecederaan kepada badan mangsa. Ada juga keterangan kuat menunjukkan bahawa tertuduh yang menyebabkan kematian mangsa. Tambahan lagi, kehadiran tertuduh pada tempat kejadian jenayah dan pengecaman tertuduh juga telah dibuktikan melalui keterangan.

(2) Tiada kesilapan oleh hakim bicara dalam memutuskan bahawa terdapat kes *prima facie* untuk tertuduh menjawab di bawah s. 302 Kanun Keseksaan. Hakim bicara telah mempertimbangkan kes pembelaan dengan teliti dan adalah betul dalam memutuskan bahawa pihak pendakwaan telah membuktikan pertuduhan terhadap tertuduh melampaui keraguan munasabah dan bahawa tertuduh gagal menimbulkan apa-apa keraguan munasabah atas kes pendakwaan.

Case(s) referred to:
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC ***(refd)***
Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC ***(refd)***
Lai Kim Hon & Ors v. PP [1980] 1 LNS 197 FC ***(refd)***
Tham Kai Yau & Ors. v. PP [1976] 1 LNS 159 FC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 113
Penal Code, ss. 300, 302

For the appellant - SS Seelan; M/s SS Seelan & Assocs
For the respondent - Eddie Yeo Soon Chye DPP

[Appeal from High Court, Seremban; Criminal Trial No: 45-9-2000]

Reported by Usha Thiagarajah

A

JUDGMENT

Low Hop Bing JCA:

Appeal

B **[1]** On 30 March 2006, the Seremban High Court convicted the accused of the offence of murder, by causing the death of one Ramesh Kumar a/l Vellasamy ("the victim"). He was sentenced to death under s. 302 of the Penal Code. (A reference hereinafter to a section is a reference to that section in the Penal Code).

C

[2] This is the accused's appeal against the conviction and sentence.

Case For Prosecution

D **[3]** The victim was a worker in Hualon Company, Nilai, Negeri Sembilan. He stayed in Room 22, 3rd Floor, Block 3 of the male hostel of the company.

[4] On 27 January 2000, at about 7.20am, when the victim's E room-mate-cum-colleague (SP7) left for work, the victim (who worked in the afternoon shift) remained in his hostel room. When SP7 returned from work at 6pm, he found the victim lying supine on the floor in a pool of blood. SP7 reported to the hostel warden (SP8). At about 8.30pm, a police party led by ASP Zaaba Abdul F Rahman (SP20) arrived at the scene. A physical examination of the victim revealed two stab wounds on the left side of the victim's neck. The victim's body was then sent to Seremban Hospital for post-mortem.

G **[5]** Dr. Sharifah Safoorah binti Syed Alwee Al'aldrus, the forensic pathologist (SP9) conducted the post-mortem and found on the left side of the victim's neck:

(1) a stab wound, 3.6 x 1.1cm, and 5.3cm deep, 6cm from the chin;

H

(2) a 1.5 x 1.1 cm stab wound, 0.55cm lateral to wound (1) above; and

(3) a stab wound, 1.2 x 0.7cm, and 4cm deep, 4cm from the left ear lobe.

I

[6] Upon internal examination, SP9 noted:

(1) subarachnoid bleeding on the base of the brain, with bilateral intraventricular haemorrhage;

(2) the hyoid-bone was incised into two halves. The left border of the epigglotis was also incised. The medial side of left sternoclei-domastoid muscle showed a 0.5cm incision at its mid portion. The anterior aspect of the body of the cervical four vertebrae showed an incision of 2.6cm. The above injuries were caused by wounds (1) and (2) in [5] above;

(3) Wound (3) in [5] above had tracked through the posterior neck muscles, penetrating between the base of the skull and the first cervical vertebrae, partially incising the corresponding spinal cord; and

(4) Both lungs showed blood spots. The trachea was filled with blood. The esophagus was also bloodstained.

[7] In SP9's opinion, there were two groups of stab wounds on the left side of the neck; the first penetrated the throat and the other incised the spinal cord. There was no defence injury. Incapacitation was rendered almost immediately. Death, rapid but not immediate, was caused by stab wounds on the neck.

[8] On 3 February 2000, a police party led by Chief Inspector Jasli bin Mohd Yusof (SP17) of the Negeri Sembilan police contingent raided a house in Ayer Tawar, Perak and arrested the accused who, upon being told of the grounds of arrest, was brought to the Sitiawan police district headquarters where initial investigations were carried out and the caution under s. 113 of the Criminal Procedure Code ("s. 113") was administered. On the same day, the accused led SP17 to two places in Klang, Selangor *viz*:

(1) a mobile phone shop where they met two male Chinese shopkeepers, one of whom was Chan Seong Kien (SP13) who produced a silver Motorola mobile phone (exh. P28) which his partner Benny Wong Kah Peng bought at RM80 from a customer; and

A (2) a goldsmith shop where the accused had sold jewellery items such as gold chain, locket and rings, taken from the victim. These jewellery items have since been smelted.

[9] From Klang, SP17 and his party took the accused to
B Seremban where the accused was handed over to the investigating officer, ASP Zaaba bin Abd. Rahman (SP20) who detained the accused for further investigation.

[10] On 4 February 2000, a cautioned statement was recorded by Chief Inspector Alagasan from the accused under s. 113. The
C accused testified that he had given his cautioned statement so that he could be released by the police as a result of his cooperation. After considering the evidence at the trial within a trial *(voir dire)*, the learned trial judge found that the cautioned statement had been made by the accused voluntarily, without threat, promise or
D inducement and so admitted it as evidence (exh. P36). We find no misdirection on the part of the learned trial judge in admitting the cautioned statement.

[11] The cautioned statement revealed that on 27 January 2000, at
E 1pm, the accused went to the victim's room in the hostel where the victim was getting ready to go to work. The accused asked the victim why, despite the warning by the former, the latter had told his friends about the former's personal matters such as taking ganja while in the army. The victim retorted by uttering abusive words.
F In the course of the altercation, the accused reached out for a knife, brandished it in the direction of the victim, and repeatedly stabbed the victim's neck, causing the victim to fall supine on the floor. As the victim was oozing with blood, the accused helped himself to the accused's wallet, and jewellery items *viz.* ring, chain and locket,
G besides RM45 cash and a mobile phone. The accused hurriedly left the victim for room 12(H1) in the hostel where he packed his personal effects and left. The accused then threw the knife into a rubbish bin along the veranda of the hostel. On the same day, the accused took refuge in his girlfriend's house in Banting. He
H returned to his hometown in Ayer Tawar, Perak on 2 February 2000. He was arrested by the police the next day.

[12] The mobile phone taken by the accused from the victim, (as admitted by the accused in his cautioned statement) was traced to
I the evidence of Lai Chook Kuan (SP18) who was working as a salesman in the mobile phone shop, Hello Station at Terminal 1,

Seremban, on 6 October 1999 when a customer bought a Motorola mobile phone at RM399 and cash bill (exh. P33) containing the particulars "No. 1 Mei: 448617-18-060431-7; SIM No: 89600 19904 209721439", issued in the name of Ramesh Kumar a/l Vellasamy ie, the victim. These particulars were identical to those for the mobile phone (exh. P28) sold by the accused to the mobile phone shop in Klang and seized by the arresting officer (SP17). Victim's room-mate (SP7) also testified that prior to the episode, the victim had a Motorola mobile phone. Based on circumstantial evidence adduced by the prosecution, it was crystal clear that the accused was the one who had sold the victim's mobile phone exh. P28, thereby connecting the accused with the offence in question.

[13] Another Hualon hostelite (SP11) confirmed that the accused was his room-mate, together with two others and that, on the day in question, at about 1.45pm, SP11 saw the accused knocking at the door of the victim's room.

[14] Learned defence counsel Mr S S Seelan contended that the learned trial judge had erred in finding that the prosecution had established a *prima facie* case for the accused to answer.

[15] Mr Eddie Yeo Soon Chye, learned deputy public prosecutor, responded that all the ingredients of murder had been proved by the prosecution and so the defence had been correctly called.

[16] In our judgment, the question whether the prosecution had proved a *prima facie* case must be determined by considering the elements of murder contained in s. 300 *viz*:

> Except in the cases hereinafter excepted, culpable homicide is murder:
>
> (a) If the act by which the death is caused is done with the intention of causing death;
>
> (b) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;
>
> (c) If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

A (d) If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

B **[17]** There is no dispute that the victim's death, on 27 January 2000, has been proved. The cause of death was "Stab Wounds on the Neck".

[18] Intention to cause death is almost always a matter of C inference. In particular, an intention to cause death may be inferred by the type of weapons used and the number of injuries suffered by the deceased or victim. In *Tham Kai Yau & Ors. v. PP* [1976] 1 LNS 159; [1977] 1 MLJ 174 FC at p. 176 F (left), Raja Azlan Shah FJ (now HRH the Sultan of Perak) held, *inter alia*, that:

D

> It cannot be disputed that intention is a matter of inference. The deliberate use by some men of dangerous weapons at another leads to the irresistible inference that their intention is to cause death. This inference should therefore make it a simple matter to come to a decision as to intention ...

E

[19] In view of the dangerous weapon (knife) used, and the injuries sustained by the deceased at the time and place of incident, there was ample evidence to infer an intention to cause bodily injury to the deceased.

F

[20] In relation to the element that it was the accused who had caused the death, overwhelming evidence was adduced through SP13, SP18 and the forensic expert SP9.

[21] The accused's presence at the scene of crime and G identification had been established through the evidence of SP13 and 18 to the effect that the accused had stabbed the deceased with the knife, exh. P12, and the evidence of SP9 relating to the cause of death.

H **[22]** The finding of facts by the learned trial judge at the close of the case for the prosecution is based on his assessment of credibility of witnesses. That assessment must be given proper weight and consideration. An appellate court should be slow in disturbing such finding of fact arrived at by the judge, who had the advantage of I seeing and hearing the witness, unless there are substantial and

compelling reasons for disagreeing with the finding: per Ong Hock Thye CJ (M) (as he then was) in *Herchun Singh & Ors v. PP* [1969] 1 LNS 52; [1969] 2 MLJ 209 FC at p. 211 D (left); per Abdoolcader FJ (as he then was) in *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232 FC at p. 275 E; and per Suffian LP (as he then was) in *Lai Kim Hon & Ors v. PP* [1980] 1 LNS 197; [1981] 1 MLJ 84 FC at p. 93 E to H.

[23] After an analysis of the evidence adduced for the prosecution, we are unable to identify any error on the part of the learned trial judge in holding that there was a *prima facie* case for the accused to answer under s. 302.

Defence Case

[24] The defence evidence revealed that on 27 January 2000, the accused was in the hostel as a squatter in Room 12 (H1) of his friend, one Bala. The accused tried to meet the victim in the victim's room at 10am that day, but no one opened the door. The accused then went to Room 19 occupied by SP10 and watched TV together with SP10, SP11 and SP12. Later at about 6pm, the accused heard that the victim had been stabbed to death. The accused felt guilty, as he was staying in the hostel as a squatter. The accused then packed his personal effects and left the hostel for Sitiawan. He was arrested on 3 February 2000 at 7.30am in his mother's house in Ayer Tawar, Sitiawan, Perak. He was then taken to the police station for questioning for two hours, during which he fully cooperated with the police.

[25] The accused denied leading Chief Inspector Jasli (SP17) to the mobile phone shop in Klang, but instead said that it was SP17 who took him to the mobile phone shop and the jewellery shop, to which the accused had allegedly sold the mobile phone, and the jewellery items respectively.

[26] In our judgment, the learned trial judge had carefully considered and weighed the defence case. We hold that he was right in deciding that the prosecution had proved the charge against the accused beyond reasonable doubt and that the accused had failed to cast any reasonable doubt in the case for the prosecution.

A

Conclusion

[27] On the foregoing grounds, we find no merit in the accused's appeal. It is dismissed. The entire decision of the High Court is hereby affirmed.

B

C

D

E

F

G

H

I